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13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 MIGUEL A. CRUZ, and JOHN D. HANSEN,
17 individually and on behalf of all others
similarly situated,

18 Plaintiffs,

19 v.

20 DOLLAR TREE STORES, INC.,
21 Defendant.

CASE NO. C 07 2050 SC
CASE NO. C 07 04012 SC

**MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S OBJECTIONS
TO THE DECLARATIONS OF
CHARLOTTA JACOBSON-
ALLEN AND CARLOS
HERNANDEZ**

DATE: March 21, 2008
TIME: 10:00 a.m.
DEPT: Ctrm. 1, 17th Floor
JUDGE: Hon. Samuel Conti

22
23
24 ROBERT RUNNINGS individually, and on
behalf of all others similarly situated,

25 Plaintiff,

26 v.

27 DOLLAR TREE STORES, INC.,
28 Defendant.

COMPLAINTS FILED: April 11, 2007
July 6, 2007
TRIAL DATES: No dates set.

Defendant, Dollar Tree Stores Inc. ("Dollar Tree"), by counsel, submits its Memorandum in Opposition to Plaintiff's Objections to the Declarations of Charlotta Jacobson-Allen and Carlos Hernandez ("Objections"), filed by plaintiff, Robert Runnings ("Runnings").

I. INTRODUCTION

Dollar Tree filed the declarations of Charlotta Jacobson-Allen ("Jacobson-Allen") and Carlos Hernandez ("Hernandez") on January 19, 2008 as exhibits to its Memorandum of Law in Support of its Motion for Summary Judgment as to Robert Runnings. Runnings filed his Objections on February 29, 2008, asserting that two discrete paragraphs of Jacobson-Allen's declaration are inadmissible, and that thirteen paragraphs of Hernandez's declaration are inadmissible. Runnings' objections as to Jacobson-Allen's declaration should be overruled because the testimony sought to be excluded falls within the business records exception. In addition, Runnings' objections to the Hernandez declaration should be overruled because Hernandez had the requisite personal knowledge. Hernandez worked for Dollar Tree as both a Store Manager and a District Manager prior to assuming his present position as a Regional Training Manager. As a result of holding those positions, Hernandez has direct knowledge, not only of Dollar Tree's expectations for the Store Manager position, but also as to how the Store Manager job is actually performed by Store Managers.

II. ARGUMENT

A. Jacobson-Allen's Declaration Summaries Are Proper.

1. Jacobson-Allen's Declaration Satisfies The Business Records Exception.

In paragraph 8, lines 3-10 of her declaration, Jacobson-Allen explains how she used Dollar Tree business records provided to her by Patricia Doss, an Employee Relations Manager for Dollar Tree, to determine on a weekly basis the percentage of California Store Managers who certified that they spent more than 50% of their time performing exempt tasks. As a result of those records, Jacobson-Allen created the chart

1 shown as Exhibit A to her declaration. That exhibit specifically incorporates the data
 2 provided by Dollar Tree and adds a final column showing the percentage of all California
 3 Store Managers certifying that they spent more than 50% of their time performing
 4 exempt tasks.

5 Runnings objects to this testimony alleging it violates the hearsay rule, the
 6 best evidence rule, and contains an improper summary. Runnings is incorrect.
 7 Jacobson-Allen's declaration is not inadmissible hearsay because it qualifies under the
 8 business records exception. The certification forms were recorded and their data was
 9 entered into Dollar Tree's computer system in the ordinary course of business. See
 10 Declaration of Patricia Doss (Doss Decl. ¶3, lines 21-23) in support of Dollar Tree's
 11 Reply to Plaintiff Robert Runnings' Opposition to the Motion for Summary Judgment and
 12 attached hereto as Exhibit A as a courtesy copy. These records have been maintained
 13 by Dollar Tree since June 2005 – two years before this litigation arose. Doss Decl. at
 14 ¶3, lines 16-17. The custodian of this data at Dollar Tree, Patricia Doss, produced the
 15 data to counsel for Dollar Tree. Doss Decl. at ¶5, lines 17-18 and ¶6, lines 22-23.
 16 Jacobson-Allen, employed as a paralegal by Dollar Tree, summarized its contents in her
 17 declaration. Thus, the underlying reports on which Jacobson-Allen's summary relies
 18 comports with the business records requirement of Federal Rule of Evidence 803(6).
 19 The reports on which the summary is based have been provided to opposing counsel in
 20 compliance with Federal Rule of Evidence 1006. Therefore, paragraph 8 and Exhibit A
 21 to the Jacobson-Allen declaration comply with the Federal Rules of Evidence and should
 22 be considered by the Court.

23 **2. Jacobson-Allen's Summary Of The Wage And Hour** 24 **Spreadsheets Is Admissible.**

25 In her declaration (accompanying Dollar Tree's Motion for Summary
 26 Judgment as to Robert Runnings; Memorandum of Points and Authorities in Support
 27 Thereof ("Dollar Tree's Memorandum")), Paula Brady explains that the Wage and Hour
 28 Reports are prepared and maintained by Dollar Tree in the ordinary course of its

1 business; that the reports identify all the employees in a given store by week, the hours
 2 they worked and the pay they received; and that she provided the report for store 2939
 3 (Runnings' store) to counsel for Dollar Tree. Brady Decl. at ¶ 11, lines 21-25.
 4 Jacobson-Allen testified that she reviewed those reports and that Runnings supervised
 5 between 8 and 40 hourly employees. Jacobson-Allen Decl. at ¶9, lines 11-13. Runnings
 6 quibbles that Jacobson-Allen does not describe how many employees were present for a
 7 particular period. However, the Wage and Hour reports were described by Paula Brady
 8 as providing information on a weekly basis. In accordance with Federal Rules of
 9 Evidence 1006, Jacobson-Allen properly summarized the Wage and Hour reports for
 10 Runnings' store.

11 Runnings also takes issue with Jacobson-Allen's use of the term
 12 "supervised," stating it is likely to cause undue prejudice and confusion. The Jacobson-
 13 Allen declaration was submitted to the Court and is not before a jury. Surely the Court
 14 will not be confused. Moreover, Runnings was the highest level manager at store 2939,
 15 set his employees' schedules and assigned them tasks to do. A true and correct copy of
 16 applicable portions of Runnings' Deposition is attached as Exhibit A to the Declaration or
 17 Supplemental Declaration of Beth Hirsch Berman, 64:23-25; 65:1-4;244:5-7; 265:15-18
 18 and a true and correct copy of applicable portions of Tellstrom's Deposition is attached
 19 as Exhibit B to the Berman Declaration, 108:10-15. Thus, Jacobson-Allen's use of the
 20 term "supervise" is consistent with the evidence and meaning of supervise as set forth in
 21 29 C.F.R. 541.105(a) and 8 Cal. Code Regs. §11070(1)(A).

22 **B. Hernandez Has Personal Knowledge.**

23 Runnings objects to Hernandez's declaration on the basis that "Mr.
 24 Hernandez does not have personal knowledge of Mr. Runnings' performance as a Store
 25 Manager." Runnings asserts that Hernandez can therefore testify only concerning Dollar
 26 Tree's expectations of performance for the position of Store Manager rather than
 27 Runnings' actual performance. Hernandez had personal knowledge, and Runnings'
 28 objection is without merit.

1 As a former Store Manager for Dollar Tree, Hernandez not only has
2 knowledge about Dollar Tree's expectations of its Store Managers, but he also has
3 personal knowledge as to what Store Managers do and how they spend their time.
4 Hernandez worked as a Dollar Tree Store Manager and knows what he spent his time
5 doing. Hernandez Decl. at ¶2, lines 11-13. Later, Hernandez became a District
6 Manager responsible for supervising an entire district of Store Managers. Hernandez
7 Decl. at ¶2, lines 13-16. Thus, Hernandez has first hand knowledge not only as to what
8 Dollar Tree expects its Store Managers to do, but also as to the reasonableness of those
9 expectations.

10 Moreover, the Ninth Circuit has repeatedly held that that personal
11 knowledge may be inferred from a declarant's position. See *Self-Realization Fellowship*
12 *Church v. Ananda Church of Self-Realization*, 206 F.3d 1322, 1330 (9th Cir.2000) ("As a
13 corporate officer of SRF, Ananda Mata could be expected to know the identity of SRF
14 employees and their tasks."); *Barthelemy v. Air Line Pilots Ass'n*, 897 F.2d 999, 1018
15 (9th Cir.1990) (CEO's personal knowledge of various corporate activities could be
16 presumed).

17 In this case, Hernandez is employed with Dollar Tree as its Regional
18 Training Manager for Region 9, which consists of some 98 stores in the Central Valley of
19 California and in Nevada. Prior to his current position, Hernandez held positions as
20 Store Manager for two different Dollar Tree stores in California, and as District Manager
21 for the Sacramento, California area. As Regional Training Manager, Hernandez
22 currently implements training programs at both the Store Manager and District Manager
23 level, and he regularly visits Dollar Tree stores throughout California. The store
24 managed by Runnings was in Hernandez's Region from about August 2005 to February
25 2007. Hernandez states, "Because of the duties I have here described (performing the
26 job, supervising the job, and providing training for the job), I have personal knowledge of
27 the duties performed by Dollar Tree Store Managers in California. Hernandez Decl. at
28 ¶2, pages 1-2, lines 25-1.

